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# **INTRODUCTION**

In accordance with the City Auditor's 1997-98 Audit Workplan, we have audited the City of San Jose's Towing Service Agreements. We conducted this audit in accordance with generally accepted government auditing standards and limited our work to those areas specified in the Scope and Methodology section of this report.

The City Auditor's Office thanks those individuals of Century Tow, City Tow, Courtesy Tow, Delta Towing, Matos Towing, and Motor Body, along with the Police Department, General Services, and the Code Enforcement Division of Planning, Building and Code Enforcement who gave their time, information, insight, and cooperation during the audit process.

## **BACKGROUND**

In February 1991, the City of San Jose (City) entered into three-year agreements, with two, one-year options for renewal, for City-generated tow services. Under the current system, the City is divided into six tow zones, with five operators who provide the City with towing services and storage yards. Employees in the Police, Planning, Building and Code Enforcement and Streets and Traffic Departments direct the towing and storage of motor vehicles removed from public and private property.

The City exercised the first renewal option on April 1, 1994. On March 21, 1995, in lieu of the final option, the City amended the agreements for the period from April 1, 1995 through March 31, 1996, to reflect two changes in State law:

1. **SB 1756** – which requires the impoundment for thirty days of the vehicles of persons operating said vehicles without a valid driver's license.
2. **AB 3148** – which provides for the forfeiture of the vehicles of drivers apprehended while driving without a valid driver's license for the second time in five years.

The amended agreements provided for an additional impound or forfeiture fee to the City equal to one-half of the storage charges collected, beginning with the sixth day of storage, after the deduction of specific expenses.

On October 2, 1995, the Housing and Community Development Committee directed the Administration to analyze four alternative ways of providing towing service and approved the evaluation criteria. The four options evaluated were:

Option 1. **Decentralized "Zone Tow" Services** - this alternative is a continuation of the current contractual arrangement. The City is divided into six geographic "zones", each of which has one contractor who provides towing and

storage services for the City. Each contractor is required to provide vehicle storage and retrieval within the respective geographic zone.

**Option 2. Centralized Storage At A Privately Owned Facility** - the City would contract with a private firm to administer most of the functions associated with towing and storage of the vehicles. The private firm would operate either: 1) the centralized storage of the vehicles and all tow trucks for the entire City contract or 2) a centralized storage facility and subcontract for towing services. The contractor would need to have a minimum of six to seven acres to store the vehicles.

**Option 3. Centralized Storage At A City Owned Facility** - the City would operate a storage yard on City property and subcontract with one or more vendors to provide towing services. The City would also contract for the sale or disposal of unclaimed vehicles. The Department of General Services had previously proposed this option as a means to generate revenues for the City.

**4. A Combination Of Option 1 and 3** - the City would operate a centralized storage facility and contract for tow services with tow operators located in specific City geographic locations. Some of the tow operators would have storage facilities, while others would use the City facility.

The evaluation criteria used for the above options were as follows:

- 1. Quality Of Service To The City** - Minimizing tow truck response time to the scene of accidents or events when City staff request that a vehicle be towed, accurate data collection systems, and timely payment of fees to the City.
- 2. Customer Service To The Vehicle Owner** - Factors such as courtesy to citizens, protecting vehicles from theft or damage and ease of access.

3. **Projected Costs** - Cost to the City, both capital outlay and annual operations.
4. **Revenue Potential** - Revenue flow to the City including fee structures and revenue sharing.
5. **Implementation Time** - Timely start up.
6. **Potential For Competition** - Proposals that offer the best opportunities for competition for any component of service.

The Administration's analysis included two recommendations. First, the current zone tow system (Option 1) be continued for 18 months through an RFP process that would include customer service improvements and revised revenue divisions. In addition, an RFP process should be completed by October 31, 1997 for Options 1, 2, and 3, including a review of zone boundaries, fee structure, revenue sharing, and customer service improvements.

On December 4, 1995, the Housing and Community Development Committee adopted a recommendation that only Option 1 (current zone tow system) be considered and that an RFP be issued for a two-year contract with one additional option year. The Committee also recommended that the City Auditor's Office conduct an audit after the first year of the new contract period. Subsequently, the contract term was revised to a three-year period, beginning April 1, 1996, with four one-year option periods.

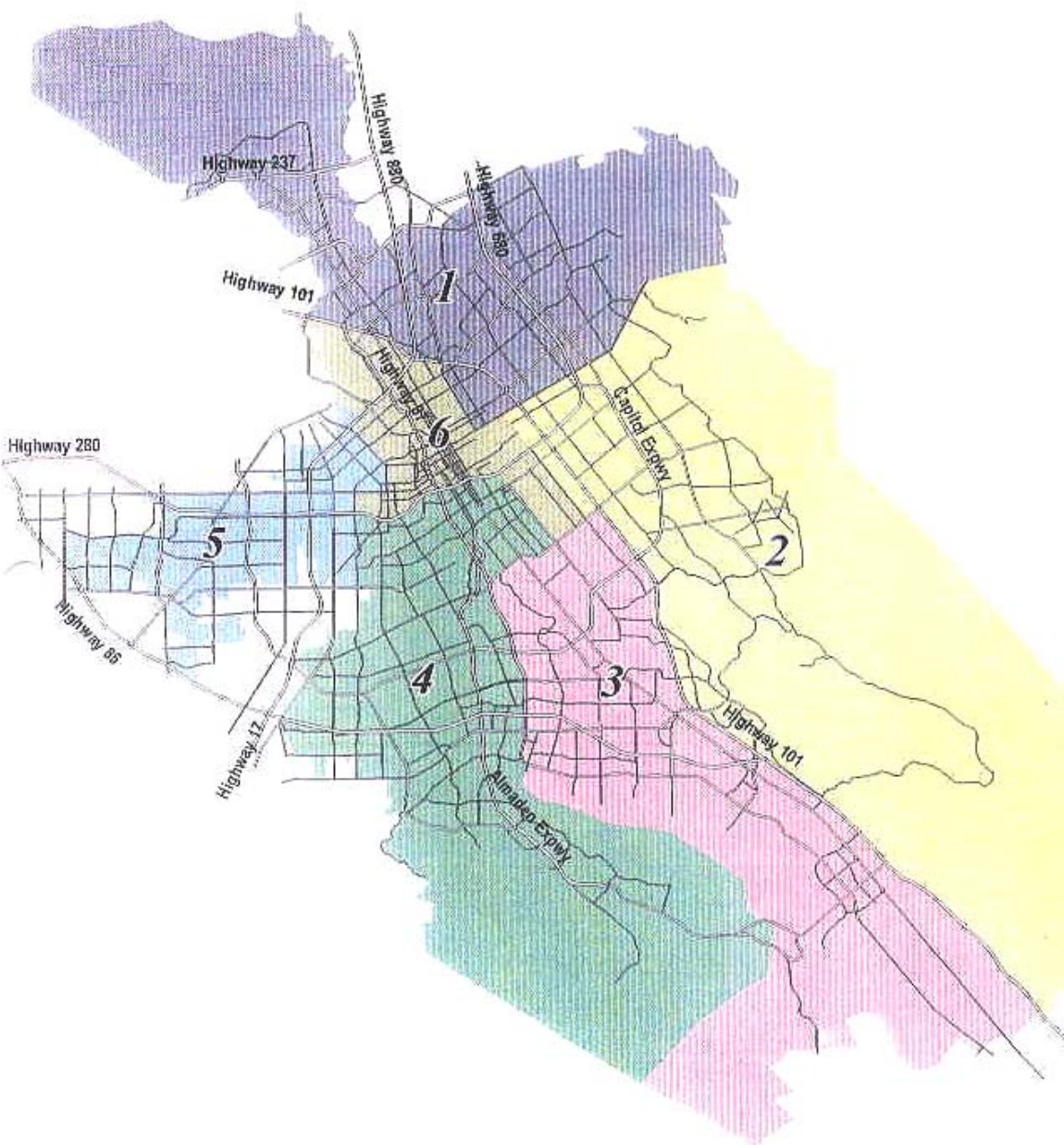
### **General Information On Each Tow Company**

As previously stated, the City is divided into six tow zones. The locations of these zones are shown on Map I.



# MAP I

## *San Jose Tow Zones*



## Zone 1 - Matos Towing

Matos Towing was founded in 1974 and has provided Zone 1 tow services to the City ever since. On August 19, 1997, the City approved the sale of Matos Towing and the assignment of Zone 1 to the owner of Courtesy Tow in Zone 5. The new owner formally began operating Matos Towing on September 15, 1997.

In addition to the City, Matos Towing provides services for the California Highway Patrol (CHP), Santa Clara County Sheriff's Department (Sheriff), Metropolitan Transportation Commission's Freeway Service Patrol (FSP), and several auto clubs and insurance providers.

From April 1, 1996 to December 31, 1997, Matos Towing towed 5,792 vehicles, which is 14 percent of the total City-generated tows.



## Zone 2 - City Towing

City Towing is a wholly-owned, family operated and privately held corporate business that has provided service to the City for over 37 years. City Towing currently tows for the City in Zone 2, which includes East San Jose, South San Jose, and the Evergreen area. Zone 2 is the largest tow zone in the City.

In addition to the City, City Towing provides tow services to the CHP, Sheriff, California Department Of Transportation (CalTrans), East Side Union High School District, San Jose Unified School District, Alum Rock Union School District, the Green Team, and Mission Valley Ford.

From April 1, 1996 to December 31, 1997, City Towing towed 10,547 vehicles, which is 25 percent of the total City-generated tows.



### Zone 3 - Century Tow

Century Tow has been towing vehicles in the City since 1979, and began providing Zone 3 tow services to the City in 1981. Century Tow is a sole proprietorship and is the only fully enclosed primary storage facility among the contractors. In addition to the City, Century Tow provides tow services to the CHP, as well as several insurance providers and an auto association.

From April 1, 1996 to December 31, 1997, Century Tow towed 6,443 vehicles, which is 16 percent of the total City-generated tows.





#### Zone 4 - Motor Body

Since 1977, Motor Body has provided towing services to the City, CHP, the Sheriff's Office, San Jose State University Police, and numerous commercial towing accounts. Motor Body became the City's Zone 4 contractor in 1981. Motor Body's secondary lot has a classroom which seats more than 40 people. Motor Body has provided this classroom for contract-related training sessions for all tow companies for the past two years.

From April 1, 1996 to December 31, 1997, Motor Body towed 6,673 vehicles, which is 16 percent of the total City-generated tows.



## Zone 5 - Courtesy Tow

Courtesy Tow serves Zone 5, the smallest zone in the City. In addition to the City, Courtesy Tow provides tow services to several auto dealerships and motor clubs. As noted earlier, the City approved Courtesy Tow's acquisition of Matos Towing and its Zone 1 tows. Courtesy Tow formally began operating Matos Towing on September 15, 1997.

From April 1, 1996 to December 31, 1997, Courtesy Tow towed 3,810 vehicles, which is 9 percent of the total City-generated tows.



## Zone 6 - Delta Towing

Delta Towing, previously known as Consolidated Towing, has provided tow services in Zone 6 for the City since 1981. Delta Towing provides tow services to the City only. The owners of Motor Body (Zone 4) also own fifty percent of Delta Towing.

From April 1, 1996 to December 31, 1997, Delta Towing towed 8,493 vehicles, which is 20 percent of the total City-generated tows.



## **Revenue Information**

Under the terms of the current tow agreements, the City receives revenue from three different sources. The first source is the \$15.00 fee the City receives on each City-generated tow. The second source is storage fees from mandatory 30-day impound tows. The City receives “ . . . \$12.50 per day for each day storage fees are collected after the fourth day of storage until the vehicle is reclaimed or sold.” The third source is proceeds from vehicles sold at a lien sale. Table I shows how much the City received from the three revenue sources from April 1, 1996 to December 31, 1997.

**TABLE I**  
**SUMMARY OF REVENUES RECEIVED FROM**  
**THE TOW SERVICE AGREEMENTS**  
**FOR THE PERIOD OF APRIL 1, 1996 TO DECEMBER 31, 1997**

<b>Tow Truck Company</b>	<b>\$15.00 Fee</b>	<b>Storage Fees</b>	<b>Lien Sale Fees</b>	<b>Totals</b>
Matos Towing	\$86,880	\$146,875	\$17,798	\$251,553
City Tow	158,205	235,269	72,885	466,359
Century Tow	96,645	151,751	24,821	273,217
Motor Body	100,095	122,194	29,215	251,504
Courtesy Tow	57,150	62,480	4,031	123,661
Delta Towing	127,395	216,210	73,200	416,805
Totals	\$626,370	\$934,779	\$221,950	\$1,783,099



## **SCOPE AND METHODOLOGY**

We reviewed the agreements for tow services (Agreements) between the City of San Jose (City) and the six tow companies. Based upon our review, we compiled a list of terms from the Agreements for which we tested compliance. See Appendix C for a list of the terms tested.

We conducted our on-site testwork of each tow company from June 1997 to December 1997. We reviewed all of the payment remittances received from the tow companies for the period of April 1, 1996 to December 31, 1997.

To determine compliance with the terms of the Agreement, we interviewed employees and toured the facilities of each tow truck companies' main office and when applicable, the secondary storage facility. We also observed auctions of vehicles obtained through the lien sale process. In addition, we reviewed the quarterly remittances and recalculated the payments submitted to the City. Furthermore, we sampled various transactions listed in the remittances and reviewed the supporting documentation to ensure all charges and fees listed were appropriate.

We also interviewed staff from the San Jose Police Department, the Code Enforcement Division of Planning, Building and Code Enforcement, the General Services Department, and the City Attorney's Office. In addition, we gathered information on refunds given to either the tow companies or the registered owner of the vehicle towed. From all the documents reviewed and interviews conducted, we analyzed the information received to determine compliance with the Agreements' terms subject to our audit.

Finally, we surveyed other jurisdictions on what type of program they have in place that addresses California Vehicle Code Section 14607.6 which applies to forfeiture tows.

# FINDING I

## **THE TOW TRUCK CONTRACTORS NEED TO PERFORM VARIOUS TASKS TO ENSURE COMPLIANCE WITH THE TOW SERVICE AGREEMENTS**

The agreements for tow services (Agreements) between the City of San Jose (City) and the six tow companies addresses tow services in connection with the enforcement of regulations regarding traffic, parking, and storage of vehicles. Our audit focused on those areas of the Agreements that contain compliance requirements. Specifically, we noted the following terms have instances of noncompliance:

- Central Communications Center
- I. D. Badges
- Customer Complaint Requirements
- Documents Required to be Posted
- Closed Circuit TV Requirements
- Required Information on Tows
- \$30,874 in Lien Sale Fee underpayments to the City
- \$1,663 in Tow and Impound Fee Schedule underpayments to the City
- \$28,182 in overcharges for labor improperly included in Hazardous Materials and Immobilized Vehicle Premium Fees
- Documents Retained for Vehicles Sold Through the Lien Sale Process

Appendix B summarizes the terms for which we found compliance and noncompliance with specific sections of the Agreement.

In our opinion, the tow truck companies should correct current instances of noncompliance with the above terms of the Agreements. In addition, the Code Enforcement Division of Planning, Building, and Code Enforcement (Code Enforcement) and the City Attorney's Office should address noncompliance with specific terms of the Agreements.

### **A.3.5 Central Communications Center**

Metcom, Inc. (Metcom) is the communication center that receives the tow requests from the City. Metcom dispatches and tracks the tows the City requested of the tow truck companies. The owner of one of the tow companies, Delta Towing, also owns Metcom. The Agreements state that

*City may from time to time designate a Central Communications Center which shall be used to dispatch Contractor to render the tow services required pursuant to the Agreement.*

*Contractor must utilize the Central Communications Center service designated by City, and Contractor shall contract for and pay for said dispatch service.*

The City has never formally designated Metcom as the “*Central Communications Center*”. In addition, Metcom only has a contract in place with one tow company for the services they provide. Despite not having all of the agreements in place, Metcom does bill and receive payments on a monthly basis for each dispatched tow.

**We recommend that Code Enforcement formally designate Metcom, Inc. as the Central Communication Center.**

**We also recommend that the tow companies and Metcom, Inc. enter into a contract for the services provided and the associated cost for that service.**

### **A.4.3 I.D. Badges**

The City’s Municipal Code (Code) section 6.66 addresses tow-car businesses. One of the requirements in the Code is that tow truck drivers obtain a tow-car permit,

which then allows them to receive a City I.D. badge. Municipal Code section 6.66.180 lists the following as reasons why a permit would be denied:

1. . . . applicant does not possess or cannot obtain the minimum required amount of bodily injury and/or property damage insurance; or
3. . . . applicant has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties . . . for which the permit is to be issued; or
4. . . . applicant was convicted of three or more moving violations of the California Vehicle Code in the last twelve months; or
5. . . . applicant is on parole or probation for a criminal offense, if the criminal offense is substantially related to the qualifications, functions, or duties . . . for which the permit is to be issued; or
6. . . . applicant has done any act involving dishonesty, fraud or deceit with intent to substantially benefit himself or another, or substantially injure another; or
7. . . . applicant has knowingly made a false statement of fact required to be revealed in an application for the permit, . . .; or
8. . . . applicant has had a permit under the provisions of this chapter revoked within the previous three years from date of application.

In addition, the Agreements state that “Contractor’s tow drivers shall be required to carry their City-issued I.D. badges with them at all times while on duty.

The Permits Unit (Permits) of the San Jose Police Department (SJPd) informed us that if a driver is listed as having a permit issued, they have been issued a City I.D. badge. Based on the testwork performed, Table II shows the tow companies that have instances of noncompliance.

**TABLE II**

**SUMMARY OF TOW COMPANIES THAT HAVE INSTANCES  
OF NONCOMPLIANCE REGARDING DRIVERS' PERMITS**

<b>Tow Company</b>	<b>Number Of Drivers Without Permits</b>
Matos Towing	2
Motor Body	2
Courtesy Tow	1

According to the tow companies noted above, the drivers without permits no long work for them.

**We recommend that the tow companies ensure that their drivers have been issued a City I.D. badge.**

**A.4.7 Customer Complaint Requirements**

The Agreements state that “*Contractor shall respond to customer complaint within ten (10) days and shall fax copies of complaint and resolution to City.*”

According to Code Enforcement, all the tow truck companies are responding to customer complaints within 10 days. However, instead of faxing the complaint and resolution, the tow companies send the forms through certified mail. This is fine with Code Enforcement and they feel the contract should be changed to reflect that the tow companies could either fax or send the complaint and resolution. Code Enforcement also stated that they feel the contract should give a timeframe as to when they are informed of the complaint.

We recommend that the City Attorney’s Office prepare an amendment to the Agreements to require the tow companies to fax Code Enforcement when a complaint is filed and either fax or mail the resolution to the City.

**A.4.8 Documents Required To Be Posted**

The Agreements state

*The following documents, . . . shall be posted by Contractor at each storage facility in a conspicuous location easily visible to the public:*

- a. Complete copy of the Agreement;*
- b. Name and address of Contractor’s insurance broker handling the insurance coverages required pursuant to the Agreement;*
- c. Schedule of all approved towing, storage and additional charges as specified in the Agreement;*
- d. A notice explaining the procedure by which unclaimed vehicles are sold at public auction, including the locations of such auctions and publications in which such auctions are advertised, and stating that all in attendance at such auction shall have an equal opportunity to bid.*
- e. “Vehicle Impound Rights and Obligations” informing the public of their rights pursuant to California Vehicle Code, Section 22852.*

The following picture is an illustration of a posting that is the schedule of all the approved towing, storage, and additional charges as specified in the Agreement.

TOW AND STORAGE RATES	
FOR SERVICES REGULATED BY THE CITY OF SAN JOSE	
TOW RATE	\$85 <sup>—</sup>
STORAGE PER DAY OUTSIDE	\$25 <sup>—</sup>
STORAGE PER DAY INSIDE	\$31 <sup>—</sup>
STORAGE MOTORCYCLES OUTSIDE	\$7 <sup>—</sup>
IMMOBILIZED VEHICLE PREMIUM	\$20 <sup>**</sup>
HAZARDOUS MATERIALS FEE	\$20 <sup>or</sup>
ADDITIONAL LABOR AND SERVICE CALLS PER HOUR	\$48 <sup>—</sup>

RATES LISTED DO NOT APPLY TO VEHICLES IN EXCESS OF NINE FEET.

Based on the testwork performed, Table III shows the items that were not posted in the main office.

**TABLE III**  
**SUMMARY OF ITEMS NOT POSTED IN THE MAIN OFFICE**

<b>Tow Company</b>	<b>Copy of Agreement</b>	<b>Insurance Information</b>	<b>Schedule of Charges</b>	<b>Auction Information</b>	<b>CVC Section 22852</b>
Matos Towing		Name and address of contractor's insurance broker.	Two additional charges were listed that are not contained in the Agreement: Additional labor - \$75, and Driveline - \$13.	The notice explaining the procedure by which unclaimed vehicles are sold at public auction.	CVC Section 22850 was listed instead of CVC Section 22852.
City Tow				The location of such auctions and publications in which such auctions are advertised and the statement that all in attendance at such auctions have an equal opportunity to bid.	
Motor Body					CVC Section 22850 was listed instead of CVC Section 22852.
Courtesy Tow		Name and address of contractor's insurance broker.		A notice explaining the procedure by which unclaimed vehicles are sold at public auction.	
Delta Towing					CVC Section 22850 was listed instead of CVC Section 22852.

**We recommend that the tow companies ensure that the postings in their main offices are in compliance with the requirements listed in the Agreement.**

#### **A.7.1 Closed Circuit TV Requirements**

The Agreements state that the Contractor shall maintain a primary lot storage facility within the City. One of the items required for the primary storage lot is the following:

- b. Monitored by closed circuit TV. Tapes are to be retained for no less than two (2) months . . . .”*

The only item of noncompliance noted is at Century Tow, which only retains tapes for one month instead of the required two months.

**We recommend that the tow companies retain the monitoring tapes for two months as required in the Agreement.**

#### **B.2.5 Required Information On Tows**

The Agreements state

*Contractor shall at all times maintain accurate and complete records of each City-generated tow provided, which shall contain the following information:*

- 1. Name, address, and phone number of person, if available, whose vehicle was towed;*
- 2. Vehicle identification number, license plate number, make, year, and model, of [sic] each vehicle towed;*
- 3. Date and time request for tow was received;*
- 4. Location from which vehicle was towed, and name or number of driver assigned to said tow;*
- 5. Reason for tow, whether accident, impound, or other reason;*
- 6. Date of release of each vehicle;*



7. *Name of party to whom vehicle was released;*
8. *All fees or charges connected with said tow, showing specifically tow, storage, hazardous material, immobilized vehicle premium, or drive line labor, and lien sale in addition to the total of such charge or fees;*
9. *All proceeds from the sale of towed vehicles that are unclaimed, and*
10. *Date that said charges were paid.*

*Contractor shall remit, with each payment, a copy of the information required . . . except item 4, and shall also remit information containing the total number of City-generated tow provided by Contractor per month.*

All six of the tow companies' records were missing the following information from the reports they submit to the City:

- Phone number of person whose vehicle was towed;
- All proceeds from the sale of unclaimed, non-30 day impound vehicles;
- All tow fees or charges for lien sold vehicles;
- The total of all fees or charges connected to tows; and
- Information containing the total number of City-generated tows by month.

Finally, Century Tow did not include the model of the vehicle towed and Courtesy Tow did not include the name and address of the person whose vehicle was towed, the time the tow request was received, and the reason for the tow.

**We recommend that the tow companies revise the remittances submitted to the City to include all the information the Agreements require.**

## **B.2.7 Lien Sale Fees**

The Agreements state the following:

*The fees due City shall be due and payable as follows:*

2. *For vehicles sold at a lien sale, the additional fees due under Subsections 2 and 3 of Section 2 of Exhibit C, shall be due and payable to CITY on the following basis: From the total amount collected CONTRACTOR may deduct the following costs, if they are incurred:*
  - a) *Lien Processing Fee:*  
*\$70.00 for vehicles valued at less than \$2500*  
*\$125.00 for vehicle valued at \$2500 or more;*
  - b) *Small Claims Court Fee;*
  - c) *Process Service Fee;*
  - d) *Advertising notice cost for vehicles valued at more than \$2500;*
  - e) *Retow to disposal site; fee of \$45.00 for vehicles which are not sold and must be delivered to wrecking yard;*
  - f) *Applicable towing fees;*
  - g) *Storage charges for the first four days of storage.*

*CONTRACTOR shall remit to CITY an amount equal to Fifty Percent (50%) of the storage charges collected and remaining after the deducting the applicable foregoing amounts. All other remaining amounts shall be distributed according to the applicable provisions of California law.*

Based on our review of the Agreement, the standard deduction of costs for the tow companies on a lien sale is \$255.00<sup>1</sup>. Any amount of money remaining after the deduction of \$255.00 is split 50/50 between the City and the tow company. We recalculated all the lien sales from April 1, 1996 to September 30, 1997. Table IV summarizes the additional amount we calculated each tow company owes the City from April 1, 1996 to December 31, 1997.

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<sup>1</sup> \$255 = \$70 lien processing fee + \$85 towing fee + \$100 storage charges for first 4 days of storage.

## TABLE IV

### SUMMARY OF CALCULATED ADDITIONAL AMOUNTS EACH TOW TRUCK COMPANY OWES THE CITY FOR LIEN SALE FEES FROM APRIL 1, 1996 TO DECEMBER 31, 1997

Tow Company	Quarter ended 6/30/96	Quarter ended 9/30/96	Quarter ended 12/31/96	Quarter ended 3/31/97	Quarter ended 6/30/97	Quarter ended 9/30/97	Quarter ended 12/31/97	Totals
Matos Towing <sup>2</sup>	\$ 275	\$1,260	\$1,395	\$1,155	\$ 15	(\$660) <sup>3</sup>	(\$1,696) <sup>3</sup>	\$ 1,744
City Tow	447	69	49	275	435	24	0	1,299
Century Tow	510	1,006	870	172	127	175	150	3,010
Motor Body	218	374	690	1,213	1,519	1,563	889	6,466
Courtesy Tow	0	7	1,353	(135) <sup>3</sup>	1,182	(815) <sup>3</sup>	477	2,069
Delta Towing	329	2,102	2,777	2,558	2,633	3,539	2,348	16,286
Totals	\$1,779	\$4,818	\$7,134	\$5,238	\$5,911	\$3,826	\$2,168	\$30,874

Based on the information contained in Table IV, the tow companies owe the City \$30,874. We discussed this situation with the City Attorney Office, and they agree that the \$30,874 is owed to the City.

**We recommend that the Finance Department collect from the tow companies the amounts of underpayment to the City from lien sales.**

### Exhibit C – Fee Schedule

#### \$15.00 Tow Fee

The Agreements state

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<sup>2</sup> As stated on page 6 of this report, the owner of Courtesy Tow purchased Matos Towing and began operating it on September 15, 1997.

<sup>3</sup> The amounts with brackets are amounts the City owes to the tow company. These instances occurred when the tow company did not deduct the appropriate amount of lien sale costs.

1. *For all types of tow, the minimum fee (\$15.00) shall be due and payable to CITY regardless of the amount collected by CONTRACTOR.*

All of the tow truck companies except Courtesy Tow are in compliance with this term of the Agreement. Courtesy Tow underreported the number of tows and therefore owes the City \$555. In addition, for the first quarter of the contract, Courtesy Tow only paid \$7.50 for each of the 51 abandoned tows they reported instead of the \$15.00 as required in the Agreement and therefore owes the City \$383. Based on our analysis of the \$15 tow fee, Courtesy Tow owes the City \$938.

### Impound Fees

The Agreements state

*Mandatory 30-day impound tow (Vehicle Code SS 14602.6): a fee calculated as follows:*

*A minimum of \$15.00, plus \$12.50 per day for each day storage fees are collected after the fourth day of storage until the vehicle is reclaimed or sold.*

All of the tow companies except Motor Body are in compliance with this term of the Agreement. Motor Body erroneously recorded storage fees for two vehicles under hazardous material and immobilized vehicle premium fees. Based on our calculations, Motor Body owes the City \$725 in impound fees. We reviewed this information with the City Attorney's Office, and they agreed that \$1,663 is owed the City.

**We recommend that the Finance Department bill the tow companies for the amount of money the City did not receive from the miscalculation of the \$15 tow fee and impound fees.**

The Agreements state

- 4.      *Service call – response by a tow-car to a request by or on behalf of a person in lawful possession of a vehicle, or by a police officer, but towing is not found to be necessary, for each period of fifteen (15) minutes, or portion thereof, required to be spent from the time of departure to return to the customary tow-car location or to release to another assignment \$12.00/qtr. hr.*
  
- 5.      *Immobilized Vehicle Premium – for vehicles with more than one flat tire or missing wheel; 2-wheel trailers with flat or missing wheel; vehicles with unsecured engine ..... \$20.00*
  
- 6.      *Hazardous Materials Fee – for clean-up and disposal of oil, fluids ..... \$20.00*

*Charging the Immobilized Vehicle Premium and/or the Hazardous Material Fee shall require the written authorization of the impounding officer on the CHP 180 form.*

All of the tow companies, except Courtesy Tow, have included in the fees they charge an amount for Hazardous Material (HM) and/or Immobilized Vehicle Premium (IVP) fees. The Agreements state that the HM and IVP fees are \$20 each. We noted that there were tows where the amount charged was higher than the \$20 the Agreements allow. We selected a sample of the HM fees charged during the first year of the Agreement and asked the tow companies to provide us the documentation that supported these fees. Some of our samples also included the IVP fee which allowed us to test that fee also.

Based on the testwork performed we found that the tow companies are including labor charges of \$12.00 per quarter hour in situations where they feel they incur more labor time than an average tow. However, the Agreements do not provide for the tow companies to do this. The Agreements allow towing companies to charge labor only when a tow is not necessary. In that situation, the tow company can charge \$12.00 for every fifteen minutes until the tow truck returns to the tow yard and/or is released and

dispatched to another assignment. Table V is a summary of tow company labor charges improperly included in the the HM and IVP fees from April 1, 1996 to December 31, 1997.

TABLE V

**SUMMARY OF TOW COMPANY LABOR CHARGES  
IMPROPERLY INCLUDED IN THE HAZARDOUS MATERIAL AND  
IMMOBILIZED VEHICLE PREMIUM FEES FROM  
APRIL 1, 1996 TO DECEMBER 31, 1997**

<b>Tow Company</b>	<b>Hazardous Material Fee</b>	<b>Immobilized Vehicle Premium Fee</b>	<b>Totals</b>
Matos Towing <sup>4</sup>	\$4,955	\$63	\$5,018
City Tow	933	92	1,025
Century Tow	4,108	2,589	6,697
Motor Body	10,152	238	10,390
Delta Towing	4,997	55	5,052
Totals	\$25,145	\$3,037	\$28,182

**We recommend that Code Enforcement submit a directive to the tow truck companies instructing them to discontinue the practice of charging for labor when a tow is involved.**

When we reviewed the information in Table V with the tow companies, five of the six tow companies told us that under the previous contract with the City, they were allowed to charge for extraordinary labor in addition to the basic tow charge. These tow companies also stated that they thought they were still allowed to charge for extraordinary labor.

<sup>4</sup> As stated on page 6 of this report, the owner of Courtesy Tow purchased Matos Towing and began operating it on September 15, 1997.

Our review revealed that the prior agreement between the City and the tow companies was entered into on February 19, 1991. The term of the agreement was for three years, with an option to renew for two successive one-year terms. This agreement contained no information on the fees the tow companies could charge. Instead City Council Resolution #62753, contained the maximum charges individuals in the tow-car business could charge. Resolution #62753 contained a section titled “*Extraordinary Services*”, which states the following

2. *When, in connection with towing services, a person engaged in the tow-car business in the City incurs expenses or furnishes services, materials or time, compensation which has not been provided for by this Resolution, or expends or furnishes services, materials or time in an unusual amount when the same shall appear to be reasonably necessary under the circumstances, and the reasonable value of the same exceeds the maximum charges provided for herein, written application for approval of the higher charges may be made to the Chief of Police. The Chief shall determine the necessity and the reasonable value of such extraordinary services or materials. The tow-car business operator may thereafter lawfully charge for the specific towing transaction applied for in an amount not in excess of the sum approved by the Chief.*<sup>5</sup>

Resolution #62753 and the three City Council resolutions that followed all contained the above noted language on extraordinary charges. However on March 28, 1995, the City and the tow companies entered into an amendment to the February 19, 1991 agreement. Included in this amendment is a schedule of the maximum tow company charges pursuant to the Agreement. The only difference between the charges included in the amendment and the previous four City Council resolutions is the deletion of the section on extraordinary charges.

According to General Services representatives, the City intentionally deleted the section on extraordinary charges when it amended the Agreement on March 28, 1995.

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<sup>5</sup> Our review of available documents indicates that the Chief of Police delegated his authority noted above to the SJPD Tow Liaison Unit.

According to General Services the basic tow charge of \$85.00 was set sufficiently high to compensate the tow companies for every type of tow, including extraordinary tows.

Given the confusion over the issue of labor charges in the City’s Agreement with the tow companies, in our opinion, the Administration should meet with the tow companies to resolve the issue of past labor charges. In addition, the Administration should consider amending the current Agreement to allow the tow companies to charge for labor when a tow requires extraordinary services.

**We recommend that Code Enforcement meet with the tow companies to resolve the issue of past labor charges.**

**We also recommend that Code Enforcement consider amending the current Agreements to allow the tow companies to charge for labor when a tow requires extraordinary services.**

In addition, the Agreements require the impounding officer to authorize in writing on the CHP 180 form the tow company charging the HM and/or IVP fees. We discovered during our testwork that the impounding officer did not always approve the HM and/or IVP fees on the CHP 180 form. Further, we noted numerous instances where the tow companies assessed an HM and/or IVP fee on an accident tow. In these instances, the impounding officer cannot authorize the tow companies to assess the HM and/or IVP fees on the CHP 180 form because that form is not used when an accident tow is involved. According to the tow companies and the SJPd, in many accident situations, it is very difficult to obtain authorization from the impounding officer because the officer is usually busy working the accident scene and dealing with traffic. In addition, depending on where the accident occurred, it may not be safe for the officer or the tow truck drive to prepare paperwork at the accident site. Furthermore, it should be noted that Code Enforcement has not received any complaints regarding the imposition of HM



and/or IVP fees. Finally, in most cases, an insurance company pays for the cost of an accident tow including HM and/or IVP fees, and they would not pay such fees if they felt they were inappropriate or improper.

**We recommend that the SJPd train officers on the Agreements’ requirement that the impounding officer has to authorize in writing on the CHP 180 form the tow companies charging the Hazardous Material and/or Immobilized Vehicle Premium fees.**

**We also recommend that the City Attorney’s Office amend the Agreements to clarify the requirements on the Hazardous Material and/or Immobilized Vehicle Premium fees when a CHP 180 form does not apply.**

**Documents Retained For Vehicles Sold Through The Lien Sale Process**

Vehicles may be sold through the lien sale process when the registered owner does not retrieve the vehicle that has been towed. Most of the lien sales originate from 30-day impound tows where the registered owner does not have the money to pay 30 days of storage fees along with the towing and other applicable fees.

As mentioned earlier in this Finding, in order to verify the accuracy of the fees paid to the City on lien sales, we selected a sample of lien sales from each tow company. When we asked for the documentation that supports the lien sales selected for testing, we found that the tow companies had varying levels of documentation. Table VI shows what type of documentation each tow company is retaining on lien sales.

**TABLE VI**

**SUMMARY OF DOCUMENTATION RETAINED  
FOR LIEN SALES BY EACH TOW COMPANY**

<b>Documentation Retained For Lien Sales</b>	<b>Matos Towing</b>	<b>City Tow</b>	<b>Century Tow</b>	<b>Motor Body</b>	<b>Courtesy Tow</b>	<b>Delta Towing</b>
Handwritten Log		X	X		X	
Notice of Pending Lien Sale	X	X	X	X		X
CHP Form 180		X	X	X		X
Smog Compliance Condition of Lien Sale Form	X					X
Odometer Disclosure Statement						X
Invoice/Receipt		X	X	X		X
Separate Wrecker's Receipt			X			X

With regards to the documents listed in Table VI, the State of California only requires the processing of the Notice of Pending Lien Sale for liened vehicles and the Odometer Disclosure Statement is required only for vehicles that predate 1973.

The Agreements do not specifically state what documents should be retained on lien sales. However, the Agreements do state

*Contractor shall keep . . . true and complete records and accounts of all gross annual receipts, and the basis on which such gross annual receipts are derived, from operations pursuant to the Agreement during each payment period. The records and accounts required herein . . . shall be to the reasonable satisfaction of City's Manager, Auditor, and Director of Finance.*

*Contractor's records and accounts shall include . . . papers, documents, and files as are required in the ordinary course of such business, or which demonstrate performance pursuant to the Agreement.*

To ensure that the 30-day impound lien sale information contained in the quarterly remittances is accurate, and in order for the City to ensure that it is receiving all fees owed, the tow companies need to retain the CHP 180 form and an invoice and/or wrecker's receipt. The CHP Form 180 records all necessary vehicle information regarding the initial tow. The invoices should be designed to capture all of the required vehicle information when it is sold, including the purchaser of the vehicle's signature.

The CHP 180 Form and an invoice and/or wrecker's receipt are critical because they are 1) used to track the vehicle as it enters and exits the tow company, 2) independent as a third party prepares or signs them, and 3) already used by some of the tow companies in the normal course of their lien sale operations.

**We recommend that the tow companies immediately begin retaining the CHP 180 Form and preparing an invoice and/or wrecker's receipt for all lien sale transactions.**

**CONCLUSION**

Based upon our audit of the compliance requirements contained in the Agreement, we noted some instances of noncompliance. By implementing the recommendations in this report, both the City and the tow companies can ensure compliance with the terms set forth in the Agreements.

**RECOMMENDATIONS**

We recommend that Code Enforcement:

**Recommendation #1:**

Formally designate Metcom, Inc. as the Central Communication Center. (Priority

2)

In addition, we recommend that the tow companies and Metcom:

**Recommendation #2:**

Enter into a contract for the services provided and the associated cost for that service. (Priority 2)

We also recommend that the tow companies:

**Recommendation #3:**

Ensure that their drivers have been issued a City I.D. badge. (Priority 2)

Furthermore, we recommend that the City Attorney's Office:

**Recommendation #4:**

Prepare an amendment to the Agreements to require the tow companies to fax Code Enforcement when a complaint is filed and either fax or mail the resolution to the City. (Priority 2)

In addition, we recommend that the tow companies:

**Recommendation #5:**

Ensure that the postings in their main offices are in compliance with the requirements listed in the Agreement. (Priority 3)

**Recommendation #6:**

Retain the monitoring tapes for two months as required in the Agreement.

(Priority 3)

**Recommendation #7:**

Revise the remittances submitted to the City to include all the information the Agreements require. (Priority 2)

We also recommend that the Finance Department:

**Recommendation #8:**

Collect from the tow companies the amounts of underpayment to the City from lien sales. (Priority 2)

**Recommendation #9:**

Bill the tow companies for the amount of money the City did not receive from the miscalculation of the \$15 tow fee and impound fees. (Priority 2)

In addition, we recommend that Code Enforcement:

**Recommendation #10:**

Submit a directive to the tow truck companies instructing them to discontinue the practice of charging for labor when a tow is involved. (Priority 1)

**Recommendation #11:**

Meet with the tow companies to resolve the issue of past labor charges. (Priority 2)

**Recommendation #12:**

Consider amending the current Agreements to allow the tow companies to charge for labor when a tow requires extraordinary services. (Priority 2)

Furthermore, we recommend that the SJPD:

**Recommendation #13:**

Train officers on the Agreements' requirement that the impounding officer has to authorize in writing on the CHP 180 form the tow companies charging the Hazardous Material and/or Immobilized Vehicle Premium fees. (Priority 2)

We also recommend that the City Attorney's Office:

**Recommendation #14:**

Amend the Agreements to clarify the requirements on the Hazardous Material and/or Immobilized Vehicle Premium fees when a CHP 180 form does not apply. (Priority 2)

Finally, we recommend that the tow companies:

**Recommendation #15:**

Immediately begin retaining the CHP 180 form and preparing an invoice and/or wrecker's receipt for all lien sale transactions. (Priority 2)

## **FINDING II**

### **THE CITY NEEDS TO IMPROVE ITS OVERSIGHT OF THE AGREEMENTS FOR TOW SERVICES**

During our review of the Agreements For Tow Services (Agreements) between the City of San Jose (City) and the six City authorized tow companies, we noted that the City's Agreements oversight needs improvement. Specifically, we noted that:

- The administration of the Agreements is not clearly developed or documented;
- The number of tows the tow companies reported did not agree with the number of dispatched tows the communication center, Metcom, Inc. (Metcom) reported; and
- San Jose Police Department (SJPd) and the Code Enforcement Division of Planning, Building and Code Enforcement (Code Enforcement) issued tow fee refunds for which the Agreements make no provision and for which no procedures are in place.

Therefore, Code Enforcement needs to develop and document the procedures necessary to monitor the Agreements. In addition, Code Enforcement needs to ensure that the number of tows the tow companies and Metcom report are in agreement. Furthermore, the City Attorney's Office needs to amend the Agreements to address the issue of refunding tow fees. Finally, the SJPd and Code Enforcement need to develop written procedures that address the refunding of tow fees. By so doing, the City will improve the administration of the Agreements, ensure that the City is paid for the appropriate amount of tows, and ensure that tow fee refunds are authorized and appropriate.



## **The Administration Of The Agreements Is Not Clearly Developed Or Documented**

Code Enforcement is responsible for the administration of the Agreements. However, the SJPD, the Streets and Traffic Department, along with Code Enforcement can request tow services. The SJPD requests the majority of tows. The following is a list of areas contained in the Agreements that the City needs to monitor:

- Services to be Provided
- Hours of Operation, Response Time, and Failure to Respond
- Standards of Service
- Required Equipment
- Towing and Storage Charges
- Storage Facilities
- Vehicle Releases
- Fees
- Contract Payments
- Security Deposit

Each one of the areas listed above contains multiple requirements, as shown in Appendix C of this report.

During the performance of our testwork, we noted that Code Enforcement staff conducts monthly visits, monthly calls, and periodic drive-throughs of each tow company's lots. In addition, Vehicle Abatement officers in the field interact with the tow company drivers frequently on abatement tows. Finally, Code Enforcement staff meet weekly to discuss what they have observed during their visits, calls, and drive-throughs in relation to the Agreements' requirements. While some contract monitoring is being conducted, these procedures are informal, are not documented, and do not address all the areas in the Agreements that need to be monitored.

According to the book Effective Contract Administration – The Complete Handbook and Guide, “*One of the most important duties in contract administration involves contract monitoring.*” Contract monitoring “*. . . is accomplished through a*

*system of contract controls . . . . Properly designed, the system ensures compliance with company policies, . . . and adequacy of records documentation.”*

Under the current system Code Enforcement has in place, they are unable to provide adequate assurance that adherence with the terms of the Agreements is occurring. Therefore, if Code Enforcement had a complete and well-documented set of procedures for monitoring tow company services many of the instances of noncompliance noted in Finding I of this report would not exist.

It should be noted that Code Enforcement has informed us that they agree with our observations, and have begun to prepare and document a formal inspection process to ensure that the tow companies are in compliance with the terms of the Agreements.

**We recommend that Code Enforcement develop and document procedures for monitoring tow company compliance with the terms of the Agreements.**

**Reconciliation Of Tows Reported By Metcom And Companies**

Metcom is the communication center that receives City requested tows. Metcom dispatches and tracks City requested tows. As part of our audit, we compared the number of tows each tow company reported on their payment remittances to the City to the number of tows that Metcom dispatched and billed each tow company. Table VII shows a comparison of this information for the period of April 1, 1996 to March 31, 1997.

**TABLE VII****COMPARISON OF NUMBER OF TOWS REPORTED BY EACH TOW COMPANY AND METCOM FROM APRIL 1, 1996 TO MARCH 31, 1997**

<b>Tow Company</b>	<b>Number Of Tows Reported By Tow Companies</b>	<b>Metcom Call Count</b>	<b>Difference Over (Under)</b>
Matos Towing	3,134	3,223	(89)
City Tow	5,958	4,840	1,118
Century Tow	3,758	3,475	283
Motor Body	3,745	3,521	224
Courtesy Tow	2,289	1,928	361
Delta Towing	5,071	5,024	47
<b>Total</b>	<b>23,955</b>	<b>22,011</b>	<b>1,944</b>

As noted in Table VII, we noted a difference of 1,944 tows between what the tow companies reported to the City and what Metcom dispatched and billed the tow companies. The reconciliation of these numbers is important from the standpoint that the City receives \$15 for each tow reported and the comparison of these two independent sources of information is a control that should ensure that the City is paid appropriately.<sup>6</sup>

We discussed the differences shown in Table VII with the tow companies and Metcom in order to determine why the differences occurred. Based on these discussions, it appears that most of the difference noted is due to sweeps. A sweep is when the City requests that multiple cars be towed away from a specific location. For example, the City requests a tow truck to be dispatched at a certain location, Metcom dispatches the appropriate tow company to the location. When the tow truck arrives, more than one car is going to be towed. In this situation, Metcom tracks, reports, and charges the tow company for one dispatched tow. However, the tow company reports and pays the City on the total number of cars they have towed. Based on this information, it appears that the tow companies reported the appropriate number of tows. However, Code Enforcement should perform monthly reconciliations of these two information sources.

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<sup>6</sup> See page 12 of this report for a summary of the \$15 fee received from April 1, 1996 to December 31, 1997.

As noted at page 15 of this report, one of the tow companies (Century Tow) has entered into a contract with Metcom for dispatching services. That contract states “ . . . if services are rendered with respect to more than one vehicle as the result of a single notification, the rendering of services with respect to each vehicle shall constitute a separate tow for such purposes.” However, this does not appear to be occurring. Table VII shows that Century Tow reported 283 more tows than Metcom dispatched. As such, if any of these 283 tows occurred in a sweep, they should have appeared in Metcom’s call count.

**We recommend that Code Enforcement request the tow companies to submit copies of their Metcom bill with their monthly reports.**

**We also recommend that Code Enforcement perform monthly reconciliations of tow company and Metcom reported number of tows.**

### **Tow Fee Reimbursements/Refunds**

California Vehicle Code (CVC) section 22852 provides the registered and legal owners of a towed vehicle the opportunity for a post-storage hearing to determine the validity of the tow and storage of their vehicle. Specifically, CVC section 22852 states

*A notice of the storage shall be mailed or personally delivered to the registered and legal owners within 48 hours, . . .*

*The poststorage hearing shall be conducted within 48 hours of the request, . . . .  
The public agency may authorize its own officer or employee to conduct the*

*hearing if the hearing officer is not the same person who directed the storage of the vehicle.*

*The agency employing the person who directed the storage shall be responsible for the costs incurred for towing and storage if it is determined in the poststorage hearing that reasonable grounds for the storage are not established.*

The SJPD Auto Desk (Auto Desk) and Code Enforcement are the two units in the City which conduct tow hearings and process tow fee reimbursements or refunds. Based on discussions with Code Enforcement, they only process approximately six to eight tow fee reimbursements or refunds per year. Code Enforcement has informal, handwritten procedures to address the tow fee reimbursements or refunds. With regards to the Auto Desk, from January 1, 1996 to December 31, 1997, they reimbursed tow companies or refunded other parties for 239 tows for a total of \$39,632. Table VIII shows the breakdown of the recipients of the Auto Desk reimbursements or refunds from January 1, 1996 to December 31, 1997.

**TABLE VIII**  
  
**BREAKDOWN OF THE AUTO DESK TOW  
REIMBURSEMENTS OR REFUNDS MADE  
FROM JANUARY 1, 1996 TO DECEMBER 31, 1997,  
BY RECIPIENT**

<b>Recipient Of Tow Refund</b>	<b>Percentage Of Total Refunds</b>	<b>Amount Of Total Refunds</b>
Tow Companies	90%	\$35,617
Registered Owner	5%	1,872
Other Companies	4%	1,915
Unknown	1%	228
Total	100%	\$39,632

Table VIII shows that 90 percent of the \$39,632 were tow fee reimbursements made directly to the tow companies. The Agreements do not contain any provisions relating to these payments. The Agreements should contain a provision that specifies the

duties and responsibilities of the City and the tow companies with regards to tow and storage fee reimbursements.

**We recommend that the City Attorney’s Office prepare an amendment to the Agreements addressing the issue of tow fee reimbursements or refunds.**

Upon further review of the \$39,632 noted above, we were able to determine the reasons for a majority of the payments. Table IX shows the reasons tow fee reimbursements and refunds were made.

**TABLE IX**  
**SUMMARY OF THE REASONS THE REFUNDS WERE MADE**

<b>Reason For Tow Refund</b>	<b>Total Number Of Refunds</b>	<b>Total Amount Of Refunds</b>	<b>Percentage Of Total Number Of Refunds</b>
Bad Tow or Administrative Error	144	\$24,011	60%
Victim’s Vehicle	27	4,229	11
Community Relations	5	740	2
Support Services	5	323	2
Unknown	58	10,329	25
Total	239	\$39,632	100%

Table IX shows that 144, or 60 percent of the \$39,632 were for Bad Tows and Administrative Errors. Bad Tows are incidents where the SJPD Tow Hearing Officer decides the tow was made in error and therefore agrees that the City should cover the costs of the tow and storage (CVC Section 22852). Administrative Errors are usually situations where the Auto Desk did not notify an owner in a timely manner that his or her vehicle is available for release. The other reasons noted for tow fee reimbursements or

refunds are that the vehicles belong to the victims of crimes, the refund is considered to be in the interest of good community relations, and to cover costs of tow company support services such as assisting the SJPD in opening a locked vehicle. We were unable to determine the reason for twenty five percent of tow fee reimbursements or refunds. We could not make such a determination because: 1) some of the summary sheets the Auto Desk provided did not list the reason for the tow fee reimbursement or refund or 2) the source documents used to prepare the summary sheet, were not retained.

When we inquired about the procedures in place that address the authorization and process by which tow fee reimbursements or refunds are handled, we were informed that there are no policies or procedures in place. Subsequently, the Auto Desk provided us with a one-page document, dated March 25, 1998, that they state are procedures for tow fee reimbursements or refunds. These procedures need to be expanded and formalized to ensure that all the necessary information is documented, authorized, processed, and retained. By developing procedures that address the authorization and processing of tow fee reimbursements or refunds, the SJPD would be able to better monitor such payments with an eye toward ensuring that tow fee reimbursements or refunds are kept to a minimum.

**We also recommend that Code Enforcement formally document the informal procedures for tow fee reimbursements or refunds.**

**Finally, we recommend that the SJPD expand and formally document the written procedures and provide training for authorizing and processing tow fee reimbursements or refunds.**

## **CONCLUSION**

During our review of the Agreements, we noted that: 1) the administration of the Agreements is not adequately developed and documented, 2) the number of tows the tow companies and Metcom reported do not reconcile, and 3) Code Enforcement and the SJPD are reimbursing tow companies and refunding tow fees, a practice for which the Agreements are silent and no written procedures exist. By implementing the recommendations in this report, the City will improve its general oversight of the Agreements.

## **RECOMMENDATIONS**

We recommend that Code Enforcement:

### **Recommendation #16:**

Develop and document procedures for monitoring tow company compliance with the terms of the Agreements. (Priority 2)

### **Recommendation #17:**

Request the tow companies to submit copies of their Metcom bill with their monthly reports. (Priority 2)

### **Recommendation #18:**

Perform monthly reconciliations of tow company and Metcom reported number of tows. (Priority 2)



We also recommend that the City Attorney's Office:

**Recommendation #19:**

Prepare an amendment to the Agreements addressing the issue of tow fee reimbursements or refunds. (Priority 2)

In addition, we recommend that Code Enforcement:

**Recommendation #20:**

Formally document the informal procedures for tow fee reimbursements or refunds. (Priority 2)

Finally, we recommend that the SJPD:

**Recommendation #21:**

Expand and formally document the written procedures and provide training for authorizing and processing tow fee reimbursements or refunds. (Priority 2)

## FINDING III

### **THE SAN JOSE POLICE DEPARTMENT NEEDS TO DEVELOP PROCEDURES TO IMPLEMENT THE STATE LAW THAT ALLOWS VEHICLES TO BE TOWED UNDER FORFEITURE GUIDELINES**

On January 1, 1995, a new state law went into effect, which states that a driver forfeits the vehicle being driven if certain criteria are met. Our review revealed that the San Jose Police Department (SJPD) has not authorized any forfeiture tows. Further, the SJPD has not prepared procedures or trained staff on the requirements that need to be met to tow a vehicle as a forfeiture. However, we noted that the agreements for tow services (Agreements) between the tow companies and the City of San Jose (City) contains a section that defines how the consideration the City would receive on a forfeiture tow would be calculated. We also contacted three jurisdictions performing forfeiture tows and obtained information on 1) their procedures, 2) how long they have been conducting forfeiture tows, and 3) how much money they have received from the forfeiture process. Finally, in California Vehicle Code section 14607.4, the State Legislature found that *“Seizing the vehicles used by unlicensed drivers serves a significant governmental and public interest, namely the protection of the health, safety, and welfare of Californians from the harm of unlicensed drivers, who are involved in a disproportionate number of traffic incidents, and the avoidance of the associated destruction and damage to lives and property.”* In our opinion, the SJPD should conduct a feasibility study on forfeiture tows and report back to the Finance Committee of the City Council by October 1, 1998.

#### **California Vehicle Code Section 14607.6**

On January 1, 1995, a new state law went into effect, which states that a driver forfeits the vehicle being driven if certain criteria are met. The California Vehicle Code (CVC) section that addresses carrying out forfeitures is 14607.6. This CVC section states that a driver forfeits the vehicle being driven if they are unlicensed, or driving on a

suspended, or revoked license and has at least one prior conviction for one of those violations, and is the registered owner of the vehicle. Appendix D lists the actions that can result in the suspension or revocation of a driver's license as listed in the Department of Motor Vehicles California Driver Handbook. The following are the requirements of CVC section 14607.6 that must be met prior to selling a vehicle:

*(2) The impounding agency, within two days of impoundment, shall send a notice by certified mail, return receipt requested, to all legal and registered owners of the vehicle, at the addresses obtained from the department, informing them that the vehicle is subject to forfeiture and will be sold or otherwise disposed of pursuant to this section. The notice shall also include instructions for filing a claim with the district attorney, and the time limits for filing a claim. The notice shall also inform any legal owner of its right to conduct the sale pursuant to subdivision (g). If a registered owner was personally served at the time of impoundment with a notice containing all the information required to be provided by this paragraph, no further notice is required to be sent to a registered owner. However, a notice shall still be sent to the legal owners of the vehicle, if any.*

*(3) If no claims are filed and served within 15 days after the mailing of the notice in paragraph (2), or if no claims are filed and served within five days of personal service of the notice specified in paragraph (2), when no other mailed notice is required pursuant to paragraph (2), the district attorney shall prepare a written declaration of forfeiture of the vehicle to the state. A written declaration of forfeiture signed by the district attorney under this subdivision shall be deemed to provide good and sufficient title to the forfeited vehicle. A copy of the declaration shall be provided on request to any person informed of the pending forfeiture pursuant to paragraph (2).*

*(4) If a claim is timely filed and served, then the district attorney shall file a petition of forfeiture with the appropriate justice, juvenile, or municipal court within 10 days of the receipt of the claim. The district attorney shall establish an expedited hearing date in accordance with instructions from the court, and the court shall hear the matter without delay. The court filing fee, not to exceed fifty dollars (\$50), shall be paid by the claimant, but shall be reimbursed by the impounding agency if the claimant prevails. To the extent practicable, the civil and criminal cases shall be heard at the same time in an expedited, consolidated proceeding.*

Once it is established that a vehicle has been forfeited, the vehicle shall be sold at a public auction within sixty days of receiving title to the vehicle. The proceeds of the vehicle shall be distributed in the following priority:

*(1) To satisfy the towing and storage costs following impoundment, the costs of providing notice pursuant to subdivision (e), the costs of sale, and the unfunded costs of judicial proceedings, if any.*

*(2) To the legal owner in an amount to satisfy the indebtedness owed to the legal owner remaining as of the date of sale, including accrued interest or finance charges and delinquency charges, providing that the principal indebtedness was incurred prior to the date of impoundment.*

*(3) To the holder of any subordinate lien or encumbrance on the vehicle, other than a registered or legal owner, to satisfy any indebtedness so secured if written notification of demand is received before distribution of the proceeds is completed. The holder of a subordinate lien or encumbrance, if requested, shall furnish reasonable proof of its interest and, unless it does so upon request, is not entitled to distribution pursuant to this paragraph.*

*(4) To any other person, other than a registered or legal owner, who can reasonably establish an interest in the vehicle, including a community property interest, to the extent of his or her provable interest, if written notification is received before distribution of the proceeds is completed.*

*(5) Of the remaining proceeds, funds shall be made available to pay any local agency and court costs, that are reasonably related to the implementation of this section, that remain unsatisfied.*

*(6) Of the remaining proceeds, half shall be transferred to the Controller for deposit in the Vehicle Inspection and Repair Fund for the high-polluter repair assistance and removal program created by Article 9 (commencing with Section 44090) of Chapter 5 of Part 5 of Division 26 of the Health and Safety Code, and half shall be transferred to the general fund of the city or county of the impounding agency, or the city or county where the impoundment occurred. A portion of the local funds may be used to establish a reward fund for persons coming forward with information leading to the arrest and conviction of hit and run drivers and to publicize the availability of the reward fund.*

## **SJPD Has Not Implemented State Law On Forfeiture Tows**

During the conduct of our testwork we inquired about whether the SJPD has conducted any forfeiture tows. The response we received was that to date, the SJPD has not authorized any forfeiture tows. In addition, our review found that the SJPD has not prepared any written procedures or trained any sworn or non-sworn staff that would be involved in processing forfeiture tows. It should be noted that the tow companies could be responsible for most if not all of the forfeiture requirements listed in the CVC code as they are currently responsible for the CVC requirements on 30-day impound tows. In fact, the Agreements contain a section that defines the consideration the City would receive on a forfeiture tow. Specifically, the Agreements state

*Mandatory forfeiture tow (Vehicle Code SS 14607.6): a fee calculated as follows: a minimum of \$15.00, plus \$12.50 per day for each day storage fees are collected after the fourth day of storage until the vehicle is reclaimed or sold, plus whatever additional amounts which are due and owing to City pursuant to Vehicle Code SS 14607.6.*

## **Other Jurisdictions' Forfeiture Programs**

We also contacted various jurisdictions conducting forfeitures and obtained the following information about their programs.

### *City Of Santa Barbara*

The City of Santa Barbara started their forfeiture program on January 1, 1995. The following are excerpts of their procedures:

- a. *If the driver is the Registered Owner of the towed vehicle, and to determine if a vehicle is to be forfeited there must be a **prior 12500/14601 CVC misdemeanor conviction** on the driver's DDL printout. You must telephone the court where the conviction occurred. If the conviction is a misdemeanor, you must request the court documentation that establishes the conviction as a misdemeanor and for court purposes, you must have the documents stamped with the courts official seal.*

- b. *A Notice of Impoundment Letter . . . will be marked immediate forfeiture and must be sent within 48 hrs. of the tow (business days), to the registered owner and the legal owner.*
- d. *The Forfeiture Log . . . is filled out by using the reference number on the 180 and the claim due date is marked, (claim due date is 15 days from the mailing date).*
- e. *After the 15 day waiting period a vehicle forfeiture request is prepared . . . . A copy of the entire file is made (and must include the court conviction and any claims against the vehicle) and the entire **copy** of the original file is sent over to the DA for forfeiture.*
- f. *If there are no claims a Declaration of forfeiture will be prepared by the DA and returned. If there are claims against the vehicle opposing the forfeiture a petition with the court must be filed by the DA and a \$50 court fee paid by the claimant.*
- g. *Once the forfeiture is completed the DA returns a copy of the forfeiture of the vehicle. The Forfeiture log . . . must be marked with the declaration date . . . and forfeiture approval date.*
- h. *While at the tow yard the vehicles value must be confirmed, if the vehicle is valued at less than \$300 the tow companies will be allowed to junk the vehicle, all other vehicles with a value over \$300 will be sold at auction.*

From January 1995 through February 1998, the City of Santa Barbara has seized almost 300 cars and collected approximately \$60,000 from the implementation of forfeiture law.

### City Of Pleasant Hill

The City of Pleasant Hill started their forfeiture program on March 1, 1995. The following are the general procedures utilized by the City of Pleasant Hill

- 1) *PD stops a driver and determines that s/he has a suspended or revoked license, has had a previous conviction for either violation, and is the registered owner of the vehicle.*
- 2) *Driver is arrested, vehicle is towed and impounded for 30 days.*
- 3) *Arresting officer gives driver a “Claim Opposing Forfeiture of Vehicle” form to be filed with the county district attorney’s office within five days. If no claim is filed, the vehicle is forfeited automatically after 30 days.*
- 4) *The PD will send a notice and “Claim Opposing Forfeiture of Vehicle” form to any other registered or legal owner of the vehicle within 48 hours. Those owner(s) must file their claims with the county district attorney within 15 days of the date the notice was mailed.*
- 5) *If there are timely claims filed, the district attorney schedules a court hearing and notifies all claimants. Each claim must be accompanied by a \$50 court filing fee, which is refunded if the court rules in favor of the claimant.*
  - (a) *If the court rules that there should not be a forfeiture, the driver pays the towing and storage fees and gets the car and the \$50 court filing fee back.*
  - (b) *If the court rules that there should be a forfeiture, the driver loses his vehicle and the court filing fee. However, there may be other valid claims on the proceeds from the sale of the vehicle.*
- 6) *(a) If there was a court hearing, the district attorney notifies PD of the court’s decision and forwards copies of all timely claims found to be valid by the court, if any.*
  - (b) *If there were no claims filed in a timely manner (an uncontested forfeiture), then there will not be a court hearing. The district attorney will notify PD after the claim-filing deadlines are passed (the 30-day impound period doesn’t apply) that the vehicle is automatically forfeited.*

The City of Pleasant Hill has received approximately \$15,000 for the General

Fund from the forfeiture process over approximately a two-year period.

### City Of Concord

The City of Concord Police Department (CPD) has a training bulletin that outlines the procedures to be utilized if the officer feels that the vehicle is subject to forfeiture

- A. *Obtain a print-out of the driver's license and registration.*
- B. *The officer will impound the vehicle for 14602.6 and 14607.6 VC.*
- C. *The officer shall complete a detailed report including the probable cause for the stop.*
- D. *The report and print-out are to be faxed to the District Attorneys Vehicle Forfeiture Division . . . by the arresting officer.*

*The District Attorneys Office will review the material and determine that enough information is included to start forfeiture proceedings.*

*The Traffic Sergeant or his designee will notify the D.A.'s Office if the registered owner or the legal owner requests a 10-day hearing under 22852 or 14607.6(n) VC.*

*The District Attorneys Office will make the notifications required under this section.*

*If the vehicle is ordered so forfeited by the court or there is no claim opposing forfeiture, the sale of the vehicle will be handled by the impounding agency in accordance with this section.*

The City of Concord has received \$14,000 for the General Fund from the forfeiture process over a three-year period.

## **Public Safety**

California Vehicle Code (CVC) section 14607.4 emphasizes the need for being able to impose the forfeiture of a vehicle and states the following

*The Legislature finds and declares all of the following:*

*(a) Driving a motor vehicle on the public streets and highways is a privilege, not a right.*

*(b) Of all the drivers involved in fatal accidents, more than 20 percent are not licensed to drive. A driver with a suspended license is four times as likely to be involved in a fatal accident as a properly licensed driver.*

*(c) At any given time, it is estimated by the Department of Motor Vehicles that of some 20 million driver's licenses issued to Californians, 720,000 are suspended or revoked. Furthermore, 1,000,000 persons are estimated to be driving without ever having been licensed at all.*



*(d) Over 4,000 persons are killed in traffic accidents in California annually, and another 330,000 persons suffer injuries.*

*(e) Californians who comply with the law are frequently victims of traffic accidents caused by unlicensed drivers. These innocent victims suffer considerable pain and property loss at the hands of people who flaunt the law. The Department of Motor Vehicles estimates that 75 percent of all drivers whose driving privilege has been withdrawn continue to drive regardless of the law.*

*(f) It is necessary and appropriate to take additional steps to prevent unlicensed drivers from driving, including the civil forfeiture of vehicles used by unlicensed drivers. The state has a critical interest in enforcing its traffic laws and in keeping unlicensed drivers from illegally driving. **Seizing the vehicles used by unlicensed drivers serves a significant governmental and public interest, namely the protection of the health, safety, and welfare of Californians from the harm of unlicensed drivers, who are involved in a disproportionate number of traffic incidents, and the avoidance of the associated destruction and damage to lives and property.** [Emphasis added]*

*(g) The Safe Streets Act of 1994 is consistent with the due process requirements of the United States Constitution and the holding of the Supreme Court of the United States in Calero-Toledo v. Pearson Yacht Leasing Co., . . . .*

The intent of this CVC section is to protect citizens from those individuals who are not qualified or not capable of safely operating a vehicle on California streets and highways. By actively enforcing the provisions of CVC 14607.4, the SJPD will enhance public safety.

**We recommend that the SJPD conduct a feasibility study on forfeiture tows and report back their findings to the Finance Committee of the City Council by October 1, 1998.**

## **CONCLUSION**

On January 1, 1995, a new state law went into effect which states that a driver forfeits the vehicle being driven if certain criteria are met. To date, the SJPD has not conducted any forfeiture tows. Other jurisdictions have implemented forfeiture programs and have obtained favorable results. Therefore, the SJPD should conduct a feasibility study on forfeiture tows and report back to the Finance Committee of the City Council by October 1, 1998.

## **RECOMMENDATION**

We recommend that the SJPD:

### **Recommendation #22:**

Conduct a feasibility study on forfeiture tows and report back their findings to the Finance Committee of the City Council by October 1, 1998. (Priority 2)